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In re Application of
POMMIER, François
U.S. Application No.: 09/763,445
PCT No.: PCT/FR00/01693
Int. Filing Date: 20 June 2000
Priority Date: 21 June 1999
Attorney's Docket No.: 041206.024
For: METHOD AND INSTALLATION FOR
AUTOMATICALLY CUTTING ...

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This decision is in response to applicant's "Response to Notification of Abandonment" filed via facsimile on 04 December 2001 which is treated as a petition to withdraw the holding of abandonment. No fee is required.

BACKGROUND

On 20 June 2000, applicant filed international application PCT/FR00/01693 claiming priority to a French patent application filed 21 June 1999. No Demand was filed, therefore, the twenty-month period for paying the basic national fee in the United States expired at midnight on 21 February 2001.

Applicant filed national stage papers pursuant to 35 U.S.C. 371 using Express Mail which was accompanied by, *inter alia*, the basic national fee. The papers were given a date of receipt of 22 February 2001 pursuant to 37 CFR 1.10(a) because the "Date In" box of the Express Mail mailing label (No. EL721440877US) was marked "Feb 22, 01."

On 13 June 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment (Form PCT/DO/EO/909) stating that the above-captioned application was abandoned because applicant failed to provide the full basic national fee by thirty [sic] months pursuant to 37 CFR 1.495(b)(2). This should have stated that applicant failed to provide the basic national fee by twenty months pursuant to 37 CFR 1.494(b)(2).

On 04 December 2001, applicant submitted via facsimile the instant response claiming that a check in the amount of \$1,490.00 was mailed "concurrent with the

national phase application."

DISCUSSION

In the present response, applicant claims that the proper fees were submitted with the national stage papers and that the "application be reinstated and a Form PCT/DO/EO/903 (filing receipt) be issued."

As previously stated, a review of the USPTO financial record in the subject application confirms that the proper basic national fee was received with the national stage papers. This is not in issue here. The Notification of Abandonment was mailed because applicant failed to provide the basic national fee prior to the expiration of 20 Months from the earliest claimed priority date pursuant to 37 CFR 1.494(b)(2).

In the above-captioned application, the earliest claimed priority date is 21 June 1999 which is the filing date of French patent No. 99/07811. According to the date listed on the Express Mail mailing label, the above-captioned application was submitted on 22 February 2001, one day after the expiration of the twenty-month time period expired. Therefore, the above-captioned application was properly abandoned.

RECOMMENDATION

If applicant believes that the "Date-In" listed on the Express Mail mailing label is incorrectly entered by the USPS, applicant may file a petition pursuant to 37 CFR 1.10(d) to correct this error.

Such a petition should be filed promptly after applicant becomes aware that the PTO has accorded a filing date based upon an incorrect entry by the USPS; include a showing that the number of the "Express Mail" mailing label was placed on each piece of correspondence prior to the original mailing; and include a showing that the correspondence was deposited as "Express Mail" prior to the last scheduled pickup on the requested filing date. Applicant should also be aware 37 CFR 1.10(d) specifically requires that any petition must be corroborated either by evidence from the USPS, or by evidence that came into being after deposit and within one business day after the deposit of the correspondence as Express Mail. See MPEP § 513.

CONCLUSION

For the reason discussed above, applicants' petition to withdraw the holding of abandonment is **DISMISSED** without prejudice.

The above-captioned application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, applicants must submit a renewed response within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw Holding of Abandonment." However, applicant is advised to file a petition pursuant to 37 CFR 1.10(d) along with the required proof. *See above.*

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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